

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:RFP:MIA:POSTF-107467-02

DRSmith

date: February 26, 2002

to: Moris L. Uhler, Revenue Agent  
LMSB Team 1207, Plantation, FL POD

from: Associate Area Counsel, LMSB, Miami, FL

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subject: [REDACTED], Inc.

This memorandum is in response to your request for legal advice dated February 5, 2002.

**This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.**

This document constitutes nondocketed significant legal advice and is subject to a 10-day post-review in the Office of Chief Counsel. Therefore, please do not implement the advice contained in this memorandum until after the expiration of this 10-day period.

Due to the purely procedural nature of this issue, no contact was made with an industry counsel prior to the issuance of this advice memorandum.

**ISSUE**

Whether billing statements relating to legal fees paid by the taxpayer to outside counsel are protected by the attorney-client privilege?

**CONCLUSION**

Billing statements, ledgers, or other time records which reveal the motive of the client in seeking legal representation, litigation strategy, or the specific nature of the legal services provided, such as researching particular areas of the law, do fall within the attorney-client privilege.

**FACTS AND DISCUSSION**

On its Form 1120S tax returns for the tax years [REDACTED] and [REDACTED], the taxpayer claimed deductions for professional fees paid to outside counsel in the amounts of \$[REDACTED] and \$[REDACTED], respectively. The revenue agent has issued an IDR requesting the original invoices for documentation supporting the amount of the expense. In responding, the taxpayer provided copies of check disbursement summaries and summary invoices which provided a brief description of the services rendered and the amount of each invoice. On the bottom of each check disbursement summary or summary invoice was the notation "detail page(s) redacted". In support of these redactions, the taxpayer submitted a two-page legal memorandum which concluded that the material redacted was subject to a claim of attorney-client privilege. The agent needs to know the reasons the legal fees were expended so that he can distinguish between legal fees paid for ordinary and necessary business expenses and those paid for nondeductible personal expenses, and also to determine whether any such fees should be capitalized.

The general rule as to disclosure of attorney billing statements is that confidential communications made by a client to an attorney to obtain legal services are protected from disclosure. Fisher v. United States, 425 U.S. 391 (1976). But not all communications between client and attorney are confidential, and so not all communications are privileged. Such things as the identity of the client, the amount of the legal fees billed or paid, the identification of payment by case file name, and the general purpose of the work performed are generally not protected from disclosure by the attorney-client privilege. United States v. Cromer, 483 F.2d 99 (9<sup>th</sup> Cir. 1973); In re Grand Jury Witness (Salas and Waxman), 695 F.2d 359 (9<sup>th</sup> Cir. 1982). However, correspondence, billing statements, ledgers or time records which also reveal the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as particular areas of the law, fall within the privilege. Chaudhry v. Gallerizzo, 174 F.3d 394 (4<sup>th</sup> Cir. 1999); Clarke v. American Commerce National Bank, 974 F.2d 127 (9<sup>th</sup> Cir. 1992). Several state court decisions in Florida are consistent with this rule. See, Old Holdings, Ltd., v. Taplin Howard Shaw & Miller, P.A., 584 So.2d 1128 (Fla. 4<sup>th</sup> D.C.A. 1991); Corry v. Meggs, 498 So.2d 508 (Fla. 1<sup>st</sup> D.C.A. 1986). In the Chaudhry case, for example, the billing statements revealed the identity of the federal statutes which were researched. The court concluded such records would divulge confidential information regarding legal advice, and thus they constituted privileged communications, and were not subject to disclosure.

As you can see, the courts have concluded that the determination as to whether attorney billing statements are privileged hinges on whether the statements reveal something about the advice sought or given. In such situations, the courts will usually resolve the dispute by making an *in camera* review of the documents in question prior to making a ruling on whether they should be disclosed. If you initiated a summons enforcement action for this purpose, this is how it would likely be handled by the judge or magistrate judge. After inspecting the unredacted billing statements, the judge would issue a ruling on whether they contained any material subject to the privilege.

If there are any further questions, please call the undersigned attorney at (305) 982-5333.

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DAVID R. SMITH  
Associate Area Counsel (LMSB)

cc: James C. Lanning, Area Counsel (RFPH)  
cc: Harmon B. Dow, Associate Area Counsel (IP) (RFPH)  
cc: Barbara B. Franklin, Senior Legal Counsel (RFPH)  
cc: TSS 4510, Attn: Associate Chief Counsel (P&A)